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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,218	09/12/2003	Juergen Pensel	33997.0089	9107
26712	7590	05/07/2007		
HODGSON RUSS LLP THE GUARANTY BUILDING 140 PEARL STREET SUITE 100 BUFFALO, NY 14202-4040			EXAMINER STULTZ, JESSICA T	
			ART UNIT 2873	PAPER NUMBER
			MAIL DATE 05/07/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/662,218

Applicant(s)

PENSEL ET AL.

Examiner

Jessica T. Stultz

Art Unit

2873

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

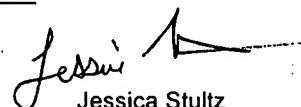
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 2-16.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
Jessica Stultz

Continuation of 11. does NOT place the application in condition for allowance because: Although an amendment was not filed, the final rejection still stands for the following reasons.

Applicant's arguments filed April 23, 2007, have been fully considered but they are not persuasive. Specifically, regarding independent claim 2, as amended, applicant argues that the Lashkari et al '031 reference does not disclose "a second deflection element arranged in the observation beam path for reflecting the display image of the patient's eye into the observation beam path" since the second deflection elements "255" and "255'" of Lashkari et al '031 are arranged prior to the displays "285" and "285'". However, the examiner disagrees since Irregardless of whether the deflection elements are positioned before or after the displays "285" and "285'", the second deflection elements "255" and "255'" reflect a display image of the eye fundus into the observation paths "260" and "260'" (Column 8, line 42-Column 9, line 55, specifically Column 8, lines 56-Column 9, line 5, wherein the mirrors "255" and "255'" deflect/invert the fundus image to the observation paths "260" and "260'", wherein the images are subsequently displayed on displays "285" and "285'", Figure 3). Additionally, applicant argues that the displays "285" and "285'" are in the observation beam paths, however, it is not claimed that the display is not located in the observation beam path..



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Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10662218	9/12/03	PENSEL ET AL.	33997.0089

HODGSON RUSS LLP  
THE GUARANTY BUILDING  
140 PEARL STREET  
SUITE 100  
BUFFALO, NY 14202-4040

EXAMINER

Jessica T. Stultz

ART UNIT

PAPER

2873

20070503

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner for Patents

Attached is an advisory action in response to the Remarks filed April 23, 2007 and the Interview with applicant's representative on May 2, 2007.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica T. Stultz whose telephone number is (571) 272-2339. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jessica T Stultz  
Examiner  
Art Unit 2873  
May 3, 2007

Appl. No. 10/662,218  
Request for Reconsideration and Interview  
Reply to Advisory Action of April 9, 2007

I hereby Certify that this Correspondence is being  
electronically transmitted to the United States  
Patent and Trademark Office on April 23, 2007.

George L. Snyder, Jr.

Name

Signature

April 23, 2007

Date of Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/662,218  
Applicant(s) : Juergen PENSEL et al.  
Filed : September 12, 2003  
Title : Ophthalmic Surgical Microscope With A Subject Illumination System  
TC/A.U. : 2873  
Examiner : Jessica T. Stultz  
  
Docket No. : 33997.0089

Do not  
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JA  
5/3/07

**REQUEST FOR RECONSIDERATION AND INTERVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This paper is in reply to the Advisory Action mailed April 9, 2007.

An Interview Request form is enclosed seeking a telephonic interview on Friday, April 27, 2007 at 10:000 AM, or at such date and time as the Examiner proposes.

Remarks begin on page 2 of this paper.